

## REMARKS

### I. STATUS OF THE CLAIMS

In accordance with the foregoing, claims 1, 3, 5, 7, 8, 10-15, 21, 22, 25-30, 36-37 and 40-44 have been amended. Proper support for the amendment to independent claims 1, 15 and 30 can be found in the specification at least at page 28, lines 15-31.

In view of the above, it is respectfully submitted that claims 1-59 are currently pending and under consideration.

### II. THE OBJECTION TO THE DRAWINGS

The attached drawing includes changes to FIG. 2. The sheet containing FIG. 2 replaces the original sheet including FIG. 2. In FIG. 2, item 120 has been relabeled as "MS," in accordance with the Examiner's suggestion.

### III. THE OBJECTION TO THE CLAIMS

Claim 21 has been amended to correct the minor informality indicated by the Examiner. Accordingly, Applicants respectfully request that the objection to claim 21 be withdrawn.

### IV. THE REJECTION OF CLAIMS 1-8 AND 10-14 UNDER 35 U.S.C. §102(e) AS BEING ANTICIPATED BY BALLANTINE

Newly amended independent claim 1 recites a method of managing a network including amongst other novel operations, "polling resources of the network to gather status information about the network; evaluating the gathered status information; and based on the gathered status information, predicting whether a future performance problem is to be encountered within the network."

Ballantine discloses a software tool for proactively monitoring network health, anticipating unacceptable network performance, alerting a network operator of unacceptable network performance, and automatically scheduling network maintenance based on anticipated unacceptable network performance (column 1, lines 6-13). To perform the foregoing operation, the software tool takes account of **prior information**

(e.g., company repair and replacement policy, knowledge of system load under different conditions, knowledge of the effect of changing the network in specific ways), system performance data gathered from network components, and information from network planning tools and maintenance scheduling tools to optimize preventive network maintenance (column 2, lines 57-64). For example, Ballantine teaches storing data disclosing that Mother's Day is the busiest day of the year with regard to subscriber use or wireless and wire line devices. Based on this information, health manager software tool 168 anticipates an increase in network load on Mother's Day and proposes solutions to a network operator for handling the potential load increase (column 5, lines 15-23).

Accordingly, Ballantine requires information or parameters about a possible or future problem to be input to the health manager software tool in advance and based on the input information predicting a future problem within the network.

Contrary to Ballantine the present invention gathers status information about the network, evaluates the gathered status information; and based on the gathered status information, predicts whether a future performance problem is to be encountered within the network. Accordingly the present invention **does not** require that information about a possible problem be input in advance in order to determine if a performance problem is to occur within the network. That is, the present invention uses real-time status information to predict a future problem, without having to rely on previously input information or parameters.

Accordingly, Applicants respectfully assert that the rejection of claim 1 should be withdrawn because Ballantine does not teach or suggest each feature of independent claim 1, as amended.

Furthermore, Applicants respectfully assert that dependent claims 2-8 and 10-14 are allowable at least because of their dependence from claim 1, as amended, and for the reasons set forth above.

V. THE REJECTION OF CLAIM 9 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE IN VIEW OF SIME

Claim 9 depends upon claim 1, and as noted above, Ballantine fails to teach or suggest the novel features recited in newly amended independent claim 1.

Sime teaches a system that allows an organization to monitor and chart Internet

gateway user activity and resource usage to allow proactive planning for expansion and reassignment before facilities become congested and users are adversely impacted (column 1, lines 66-67 and column 2, lines 1-4). The system taught by Sime includes an internal network of an organization connected to the public Internet 14 by a plurality of Internet gateways 16. Each Internet gateway 16 operates to receive requests from internal network 10 for communications on public Internet 14. Internet gateways 16 then services these requests by interfacing with public Internet 14 and providing information back to internal network 10. Internet gateways 16 can perform additional functions such as firewall protection for internal network 10 (column 2, lines 31-39). Accordingly, Sime teaches a system for charting Internet gateway performance by gathering statistical information of the network.

However, Sime also fails to teach or suggest the features recited in newly amended independent claim 1.

Accordingly, Applicants respectfully assert that the rejection of claim 9 should be withdrawn because neither Ballantine nor Sime, whether taken alone or in combination teach or suggest each feature of independent claim 1, as amended, upon which claim 9 depends from.

VI. THE REJECTION OF CLAIMS 15-19, 22-29 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE IN VIEW OF SIME

Claim 15 as amended recites a system for managing a network, wherein "at least one polling gateway that is operable to gather status information for one or more network elements; at least one processor-based management server communicatively coupled to the at least one polling gateway to receive gathered status information from said at least one polling gateway; and the at least one processor-based management server predicting the occurrence of a performance problem within the network based on the gathered status information."

As noted above, Ballantine teaches a tool for monitoring the health of a network that requires information about a possible or future problem to be input to the health manager software tool **in advance** and based on the input information predicting a future problem within the network.

Accordingly, Ballantine does not teach or suggest each feature of independent

claim 15, as amended, such as for example, "predicting the occurrence of a performance problem within the network based on the gathered status information."

Sime teaches a system for charting Internet gateway performance by gathering statistical information of the network. Therefore, Sime also fails to teach or suggest the features recited in newly amended independent claim 15.

Accordingly, Applicants respectfully assert that the rejection of claim 15 should be withdrawn because neither Ballantine nor Sime, whether taken alone or in combination teach or suggest each feature of independent claim 15, as amended.

Claims 16-19 and 23-29 depend upon independent claim 15.

As noted above, neither Ballantine nor Sime, whether taken singly or combined teach or suggest the features recited in amended independent claim 15.

Accordingly, Applicants respectfully assert that dependent claims 16-19 and 23-29 are allowable at least because of their dependence from independent claim 15, and the reasons set forth above.

VII. THE REJECTION OF CLAIMS 20 AND 21 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE AND SIME IN VIEW OF CHIN

Claim 20 depends upon claim 15 and as noted above neither Ballantine nor Sime, whether taken singly or combined teach or suggest the features recited in amended independent claim 15.

Chin discloses a method and apparatus for displaying from a single window on a network management station the health status of all network devices and objects of a computer network (abstract).

Accordingly, Chin also fails to teach or suggest the features recited in newly amended independent claim 15.

Accordingly, Applicants respectfully assert that the rejection of claim 20 under 35 U.S.C. §103(a) should be withdrawn because neither Ballantine, Sime nor Chin, whether taken singly or combined teach or suggest the features recited in independent claim 15 upon which claim 20 depends from.

Claim 21 depends upon claim 15 and as noted above neither Ballantine nor Sime nor Chin, whether taken singly or combined teach or suggest the features recited in

amended independent claim 15.

Accordingly, Applicants respectfully assert that the rejection of claim 21 under 35 U.S.C. §103(a) should be withdrawn because neither Ballantine, Sime nor Chin, whether taken singly or combined teach or suggest the features recited in independent claim 15 upon which claim 20 depends from.

VIII. THE REJECTION OF CLAIMS 30-44 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE IN VIEW OF SIME

Claim 30 as amended recites a management system for managing one or more layers of a network wherein "at least one processor-based management server including software code executing thereon, wherein said software code learns a condition for predicting a performance problem within the network from said gathered status information to enable the processor-based management server to predict the occurrence of a performance problem within the network."

As noted above, Ballantine teaches a tool for monitoring the health of a network that requires information about a possible or future problem to be input to the health manager software tool **in advance** and based on the advanced input information predicting a future problem within the network.

Accordingly, Ballantine does not teach or suggest each feature of independent claim 30, as amended.

Sime teaches a system for charting Internet gateway performance by gathering statistical information of the network. Therefore, Sime also fails to teach or suggest the features recited in newly amended independent claim 30.

Accordingly, Applicants respectfully assert that the rejection of claim 30 should be withdrawn because neither Ballantine nor Sime, whether taken alone or in combination teach or suggest each feature of independent claim 30, as amended.

Claims 31-37 and 40-44 depend upon independent claim 30.

As noted above, neither Ballantine nor Sime, whether taken singly or combined teach or suggest the features recited in amended independent claim 30.

Accordingly, Applicants respectfully assert that dependent claims 31-44 are allowable at least because of their dependence from independent claim 30, and the

reasons set forth above.

IX. THE REJECTION OF CLAIMS 45 AND 46 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE AND SIME IN VIEW OF BARRACK

Claims 45 and 46 depend upon independent claim 30.

As noted above, neither Ballantine nor Sime, whether taken singly or combined teach or suggest the features recited in amended independent claim 30.

Barrack discloses a system that automatically integrates new network elements. The system detects the connection of the new element with the system. The system identifies the new element, either directly or inferentially, by examining the protocol, the inputs, and the outputs of the new element, as compared with stored information (abstract).

Accordingly, Barrack also fails to teach or suggest "at least one processor-based management server including software code executing thereon, wherein said software code **learns a condition for predicting** a performance problem within the network from said gathered status information to enable the processor-based management server to predict the occurrence of a performance problem within the network," as recited in newly amended independent claim 30.

Therefore, Applicants respectfully assert that dependent claims 45 and 46 are allowable at least because of their dependence from independent claim 30, and the reasons set forth above.

X. THE REJECTION OF CLAIMS 47-48, 50--58 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE AND SIME IN VIEW OF KULATUNGE

Claims 47-48 and 50-58 depend upon independent claim 30.

As noted above, neither Ballantine nor Sime, whether taken singly or combined teach or suggest the features recited in amended independent claim 30.

Kulatunge discloses a system for proactive maintenance of a telecommunications network. A database is created containing characteristics of a plurality of valid logs. These valid logs represent alarms within a network which report status and abnormalities in the network and which have been specifically selected by a network domain expert or

administrator from a larger group of logs. The characteristics correspond to a pattern of network fault parameters. The network is monitored for occurrences of a valid log (abstract).

Accordingly, Kulatunge also fails to teach or suggest "at least one processor-based management server including software code executing thereon, wherein said software code learns a condition for predicting a performance problem within the network from said gathered status information to enable the processor-based management server to predict the occurrence of a performance problem within the network," as recited in newly amended independent claim 30.

Therefore, Applicants respectfully assert that dependent claims 47-48 and 50-58 are allowable at least because of their dependence from independent claim 30, and the reasons set forth above.

XI. THE REJECTION OF CLAIM 49 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER BALLANTINE AND SIME AND KULATUNGE IN VIEW OF QUELENE

Claim 49 depends upon independent claim 30.

As noted above, neither Ballantine nor Sime nor Kulatunge, whether taken singly or combined teach or suggest the features recited in amended independent claim 30.

Quelene discloses a system that permits commercial transactions over a network of computers (abstract).

Accordingly, Quelene also fails to teach or suggest "at least one processor-based management server including software code executing thereon, wherein said software code learns a condition for predicting a performance problem within the network from said gathered status information to enable the processor-based management server to predict the occurrence of a performance problem within the network," as recited in newly amended independent claim 30.

Therefore, Applicants respectfully assert that dependent claim 49 is allowable at least because of its dependence from independent claim 30, and the reasons set forth above.

XII. CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

Date: 6/3/04

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